

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. *97-cv-1241*

SANDY MASCIATTI, MARJORIE MONDESIR,
and KRIS POWELL, on behalf of themselves
and others similarly situated,

Plaintiff,

MAGISTRATE JUDGE
BROWN

vs.

WASHINGTON MUTUAL BANK, a Foreign
corporation,

Defendant.

COMPLAINT

COME NOW the Plaintiffs, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, on behalf of themselves and all others similarly situated, by and through their undersigned counsel, and sue the Defendant, WASHINGTON MUTUAL BANK, a Foreign corporation, and as grounds therefor states as follows:

1. The Plaintiffs, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, are former employees of Defendant, WASHINGTON MUTUAL BANK, and they bring this action on behalf of themselves and other current and former employees of the Defendant, WASHINGTON MUTUAL BANK, similarly situated to them, for compensation and other relief under the Fair Labor Standards Act, as amended (the "Act"), 29 U.S.C. §201, et seq.

2. Plaintiff, SANDY MASCIATTI, is a citizen and resident of Broward County, Florida, within the jurisdiction of this Court.

3. Plaintiff, MARJORIE MONDESIR, is a citizen and resident of Miami-Dade County, Florida, within the jurisdiction of this Court.

4. Plaintiff, KRIS POWELL, is a citizen and resident of Miami-Dade County, Florida, within the jurisdiction of this Court.

5. Defendant, WASHINGTON MUTUAL BANK, is a Foreign corporation, with offices in Broward and Miami-Dade County Florida, within the Southern District of Florida.

6. While employed by Defendant, WASHINGTON MUTUAL BANK, Plaintiffs were paid on an hourly basis, but were not paid overtime for hours actually worked in excess of 40 because their supervisor changed their time records or, alternatively, ordered them not to place accurate times on their time records in order to prevent them from showing overtime on their time sheets. Upon information and belief, this was done pursuant to a company scheme or device to evade the maximum hour protections of the Fair Labor Standards Act.

7. Jurisdiction is conferred on this Court by 28 U.S.C. §1337 and by 29 U.S.C. §216(b). At all times pertinent to this Complaint, Defendant, WASHINGTON MUTUAL BANK, regularly operated a business engaged in the savings and loan industry. The annual gross revenue of Defendant, WASHINGTON MUTUAL BANK, was in excess of \$500,000.00 per annum.

8. By reason of the foregoing, Defendant, WASHINGTON MUTUAL BANK, was, during all times hereafter mentioned, an enterprise engaged in commerce or in the

production of goods for commerce as defined in §§3(r) and 3(s) of the Act, 29 U.S.C. §203(r) and §203(s). In addition, Defendant utilized goods in commerce, engaged in commerce, and had its workers, including Plaintiffs, engage in commerce or utilize goods in commerce as part of their employment.

9. The additional persons who may become Plaintiffs in this action are employees who have been paid on an hourly basis, but whose time records have been altered or, alternatively, who were forced to place false times on their time records in order for the Defendant, WASHINGTON MUTUAL BANK, to evade the maximum hour protections of the Fair Labor Standards Act, and thus were subject to the same payroll practices and procedures described above.

10. At all times pertinent to this Complaint, Defendant, WASHINGTON MUTUAL BANK, failed to comply with 29 U.S.C. §201-19 in that Plaintiffs and those similarly situated to Plaintiffs performed services for Defendant for which no provision was made by Defendant to properly pay Plaintiffs for those hours.

11. By reason of Plaintiffs' employment with Defendant, WASHINGTON MUTUAL BANK, they were employed by an enterprise engaged in commerce within the meaning of 29 U.S.C. §§206(a) and 207(a). Further, Plaintiffs themselves were engaged in interstate commerce. The work performed by Plaintiffs was directly essential to the business operations of Defendant which were directly essential to the business performed by Defendant.

12. The records reflecting hours worked by Plaintiffs and all other similarly situated employees and the compensation actually paid to such employees are in the possession and custody and control of Defendant and Plaintiffs are unable to state at this time the exact amount due and owing them or each similarly situated employee. Plaintiffs propose to obtain such information by appropriate discovery proceedings to be taken promptly in this case and, if necessary, Plaintiffs will then seek leave to amend their Complaint to set forth the precise amount due them.

13. Plaintiffs, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, are entitled to be paid the time and a half of their average hourly wage for each hour in each work week in which they worked more than forty (40) hours. All similarly situated employees are similarly owed their overtime payments for each overtime hour they worked and were not properly paid.

14. By reason of the said intentional, willful and unlawful conduct of Defendant, WASHINGTON MUTUAL BANK, Plaintiffs have suffered damages, incurred costs and are also entitled to receive reasonable attorneys' fees.

15. As a result of Defendant's willful violation of the Act, Plaintiffs are entitled to liquidated damages in an amount equal to their actual damages. Moreover, since the failure to pay overtime was part of a corporate-wide scheme and device, this Court should impose a three-year statute of limitations upon Defendant because of the wilful nature of this misconduct.

WHEREFORE, Plaintiff, SANDY MASCIATTI, MARJORIE MONDESIR and KRIS POWELL, and those similarly situated to them, who have or will opt into this action, demand judgment against Defendant, WASHINGTON MUTUAL BANK, for the overtime payments due them for the hours worked by them for which they have not been properly compensated, liquidated damages, prejudgment interest, reasonable attorneys' fees and costs of suit, and for all other relief the Court deems just and proper, including pre-judgment interest.

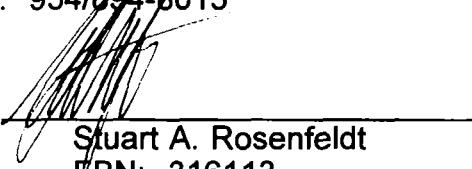
PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE BY
RIGHT.

Dated this 20th day of April, 2000.

Respectfully submitted,

Phillips, Eisinger, Koss, Rothstein
& Rosenfeldt, P.A.
Attorneys for Plaintiffs
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Fax: 954/894-8015

By:


Stuart A. Rosenfeldt
FBN: 316113

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

SANDY MASCIATTI, MARJORIE MONDESIR, and KRIS POWELL, on behalf of themselves and others similarly situated

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Miami-Dade
(EXCEPT IN U.S. PLAINTIFF CASES)

A Dade | 100CV1427 | Davis Brown

(c) ATTORNEYS (FIRM NAME ADDRESS AND TELEPHONE NUMBER)

Stuart A. Rosenfeldt, Esq., Phillips, Eisinger, Koss, Rothstein & Rosenfeldt, P.A., 4000

Hollywood Blvd., Ste. 265-S Hollywood, Fla. 33021 Tele: 954/894-8000

(d) CIRCLE COUNTY WHERE ACTION AROSE DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE HIGHLANDS

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

U.S. Government Plaintiff

3 Federal Question
(U.S. Government Not a Party)

U.S. Government Defendant

4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from
 5 another district (specify)

6 Multidistrict Litigation

Appeal to Dist. Judge from
 7 Magistrate Judgment

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

A CONTRACT

110 Insurance
 120 Marine
 130 Miller Act
 140 Negotiable Instrument
 150 Recovery of Overpayment & Enforcement of Judgment
 151 Medicare Act
 152 Recovery of Defaulted Student Loans - Excl. Veterans
 153 Recovery of Overpayment of Veteran's Benefits
 160 Stockholders Suits
 190 Other Contract
 195 Contract Product Liability

210 Land Condemnation
 220 Foreclosure
 230 Rent Lease & Ejectment
 240 Torts to Land
 245 Torts Product Liability
 290 All Other Real Property

310 Airplane
 315 Airplane Product Liability
 320 Assault, Libel & Slander
 330 Federal Employers Liability
 340 Marine
 345 Marine Product Liability
 350 Motor Vehicle
 355 Motor Vehicle Product Liability
 360 Other Personal Injury

441 Voting
 442 Employment
 443 Housing/ Accommodations
 444 Welfare
 446 Other: Civil Rights

A TORTS

PERSONAL INJURY
 362 Personal Injury - Med Malpractice
 365 Personal Injury - Product Liability
 368 Asbestos Personal Injury Product Liability
 PERSONAL PROPERTY
 370 Other Fraud
 371 Truth in Lending
 380 Other Personal Property Damage
 385 Property Damage Product Liability

510 Motions to Vacate Sentence
HABEAS CORPUS:
 530 General
 535 Death Penalty
 540 Mandamus & Other
 550 Civil Rights
 555 Prison Condition

610 Agriculture
 620 Other Food & Drug
 625 Drug Related Seizure of Property 21 USC 881
 630 Liquor Laws
 640 R.R. & Truck
 650 Airline Regs
 660 Occupational Safety/Health
 690 Other

A LABOR

710 Fair Labor Standards Act
 720 Labor/Mgmt Relations
 730 Labor/Mgmt Reporting & Disclosure Act
 740 Railway Labor Act
 750 Other Labor Litigation

781 Empl. Ret. Inc Security Act

A BANKRUPTCY

422 Appeal 28 USC 158
 423 Withdrawal 28 USC 157
 A PROPERTY RIGHTS
 820 Copyrights
 830 Patent
 840 Trademark

B SOCIAL SECURITY

861 HIA (1395F)
 862 Black Lung (1923)
 863 DIWC/DIWW (405(g))
 864 SSID Title XVI
 865 RSI (405(g))

FEDERAL TAX SUITS

870 Taxes (U.S. Plaintiff or Defendant)
 871 IRS - Third Party 28 USC 709

<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 450 Commerce/ICC Rates/Etc
<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 875 Customs: Challenge 12 USC 3410
<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 900 Appeal of Fee Determination: Under Equal Access to Justice Act
<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 990 Other Statutory Actions
A OR B

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE.
DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

29 U.S.C. Section 216B

LENGTH OF TRIAL
8 days estimated (for both sides to try entire case)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
 UNDER F.R.C.P. 23

DEMAND \$

Over \$50,000.00

CHECK YES only if demanded in complaint
JURY DEMAND: YES NO

VIII. RELATED CASE(S) (See instructions):
IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

04/20/00

SIGNATURE OF ATTORNEY OF RECORD

Stuart A. Rosenfeldt, Esq., Counsel for Plaintiff

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

\$150.00 820741
04/20/00